



faegredrinker.com

Lucy N. Onyeforo  
Associate  
lucy.onyeforo@faegredrinker.com  
+1 212 248 3268 direct

Faegre Drinker Biddle & Reath LLP  
1177 Avenue of the Americas, 41st Floor  
New York, New York 10036  
+1 212 248 3140 main  
+1 212 248 3141 fax


The request is GRANTED. In light of the parties' agreement that Exhibit 1 contains sensitive competitive business information, and after review of that exhibit, the Court concludes that the presumption in favor of public access is outweighed by the need to protect sensitive, proprietary business information. See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006).

August 22, 2023

**VIA ECF**

Dated: August 23, 2023  
New York, New York

**SO ORDERED.**

  
**JENNIFER L. ROCHON**  
United States District Judge

Honorable Jennifer L. Rochon  
United States District Judge for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

**Re: Zest Anchors, LLC vs. Biomet 3i, LLC, No. 1:23-cv-07232 (JLR), Motion to Seal Confidential Exhibit**

Dear Judge Rochon:

We represent Defendant Biomet 3i, LLC, d/b/a ZimVie ("ZimVie") in the above-referenced action. We write pursuant to Section 4.B of Your Honor's Individual Rules of Practice in Civil Cases to seek the Court's approval to file under seal the 2016 distribution agreement between the parties (the "Distribution Agreement"), submitted under seal here as Exhibit 1 to the Declaration of Lucy N. Onyeforo. ZimVie offers this exhibit as attached to and in support of ZimVie's motion to dismiss Plaintiff Zest Anchors, LLC, d/b/a Zest Dental Solutions ("Zest")'s Complaint (ECF No. 1-1), filed today. We conferred with Zest's counsel regarding sealing, and Zest does not object to the relief requested herein.

ZimVie respectfully requests that the Distribution Agreement be sealed to protect sensitive information of the parties. The Distribution Agreement contains many terms regarding rights and obligations not at issue in this suit and detailed, sensitive price information, including for many products not relevant to this suit.

The public and the press have a qualified First Amendment right to access judicial documents and proceedings, but that right may be overcome in certain circumstances, allowing a court to permit a party to file documents under seal. See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006). "[D]ocuments may be sealed if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* (punctuation omitted). "The demonstration of a valid need to protect the confidentiality of proprietary business information, such as internal analyses, business strategies, or customer negotiations, may be a legitimate basis to rebut the public's presumption of access to judicial documents." *Sec. & Exch. Comm'n v. Telegram Grp. Inc.*, No. 19-CV-9439 (PKC), 2020 WL 3264264, at \*3 (S.D.N.Y. June 17, 2020).

Here, disclosure of the terms of the Distribution Agreement could place both parties at a competitive disadvantage relative to others in the market by revealing competitively sensitive information about pricing, relationships with third parties, and the parties' negotiation tactics and valuation of contract terms. This justifies protection of the full Distribution Agreement. See *Standard Inv. Chartered, Inc. v. Fin. Indus. Regul. Auth., Ind.*, 347 F. App'x 615, 617 (2d Cir.

Honorable Jennifer L. Rochon

- 2 -

August 22, 2023

2009); *Automated Mgmt. Sys., Inc. v. Rappaport Hertz Cherson Rosenthal, P.C.*, No. 1:16-cv-04762-LTS-KNF, 2022 WL 1450737, at \*2 (S.D.N.Y. May 9, 2022).

For the reasons discussed above, and pursuant to Section 4.B of Your Honor's Individual Rules of Practice in Civil Cases and Rule 6.5 of the Southern District of New York Electronic Case Filing Rules and Instructions, we request that Exhibit 1 to the Declaration of Lucy N. Onyeforo be sealed. At this time, this document will be filed under seal and viewable by counsel for all parties to the case, the Court, and Court personnel.

Very truly yours,

/s/ Lucy N. Onyeforo

Lucy N. Onyeforo

LNO/